

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MARCIAL NAVARRO-RODRIGUEZ,	:	
Petitioner	:	
	:	
v.	:	No. 1:23-cv-00884
	:	
	:	(Judge Kane)
WARDEN F. GARZA,	:	
Respondent	:	

MEMORANDUM

Before the Court is a habeas corpus petition filed under 28 U.S.C. § 2241 through which Petitioner Marcial Navarro-Rodriguez (“Navarro-Rodriguez”) asserts that his continued incarceration in federal custody violates the Constitution. For the reasons discussed below, the Court will dismiss the petition without prejudice for failure to exhaust administrative remedies.

I. BACKGROUND

Navarro-Rodriguez is incarcerated in Canaan United States Penitentiary (“USP-Canaan”). He filed the instant petition to challenge his federal incarceration on May 23, 2023, and the Court received and docketed the petition on May 30, 2023. (Doc. No. 1.) Navarro-Rodriguez contends that he is being unlawfully imprisoned because his federal sentence expired in 2017. (Id. at 2.)

Respondent, the warden at USP-Canaan (“Respondent”), responded to the petition on July 28, 2023. (Doc. No. 11.) Respondent argues that the petition should be dismissed for failure to exhaust administrative remedies. (Id. at 8–10.) Respondent additionally argues that the petition fails on its merits because Navarro-Rodriguez is serving a state sentence in federal custody as a state boarder pursuant to 18 U.S.C. § 5003. (Id. at 10–12.) Navarro-Rodriguez filed a reply brief on September 21, 2023, in which he argues, inter alia, that exhaustion is not

required for habeas corpus petitions filed pursuant to 28 U.S.C. § 2241 and that exhaustion would be futile. (Doc. No. 14.)

II. DISCUSSION

The Court will dismiss this petition without prejudice for failure to exhaust administrative remedies. 28 U.S.C. § 2241 does not contain an explicit statutory exhaustion requirement, but the United States Court of Appeals for the Third Circuit has consistently required a petitioner to exhaust his administrative remedies before filing a Section 2241 petition. See Moscato v. Fed. Bureau of Prisons, 98 F.3d 757, 760 (3d Cir. 1996). Exhaustion is required “for three reasons: (1) allowing the appropriate agency to develop a factual record and apply its expertise facilitates judicial review; (2) permitting agencies to grant the relief requested conserves judicial resources; and (3) providing agencies the opportunity to correct their own errors fosters administrative autonomy.” See id. at 761–62 (citing Bradshaw v. Carlson, 682 F.2d 1050, 1052 (3d Cir. 1981)). Exhaustion is not required when it would not promote these goals, such as when it would be futile. See, e.g., Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 239 n.2 (3d Cir. 2005).

The BOP has a multi-step administrative remedy program allowing an inmate “to seek formal review of an issue relating to any aspect of his/her own confinement.” See 28 C.F.R. § 542.10(a). First, an inmate should attempt informal resolution of the issue with the appropriate staff member. See id. § 542.13(b). If informal resolution is unsuccessful, the inmate may submit a formal written grievance, using the BP-9 form, to the warden within twenty (20) calendar days “following the date on which the basis for the Request occurred.” See id. § 542.14(a). The warden is to respond to the request within twenty (20) calendar days. See id. § 542.18. An inmate dissatisfied with the warden’s response may appeal, using the BP-10 form, “to the appropriate Regional Director within 20 calendar days of the date the warden signed the

response.” See id. § 542.15(a). Finally, an inmate may appeal the Regional Director’s response, using the BP-11 form, to the BOP’s General Counsel “within 30 calendar days of the date the Regional Director signed the response.” See id. The General Counsel’s response is due within twenty (20) calendar days; however, the time period for response may be extended by twenty (20) days. See id. § 542.18.

In this case, Respondent contends that Navarro-Rodriguez failed to exhaust administrative remedies because he has not filed any administrative remedy requests related to his current claims during his time in federal custody. (Doc. No. 11 at 8–10.) Navarro-Rodriguez replies that exhaustion is not required for Section 2241 habeas corpus petitions and that exhaustion would be futile. (Doc. No. 14 at 13–14.)

The Court agrees with Respondent that Navarro-Rodriguez has failed to exhaust administrative remedies. The record reflects that Navarro-Rodriguez has not filed any administrative remedy requests relating to his current petition. See (Doc. No. 11-16).

The Court finds Navarro-Rodriguez’s arguments to the contrary unavailing. It is well established under binding Third Circuit precedent that exhaustion of administrative remedies is required for Section 2241 habeas corpus petitions. See Moscato, 98 F.3d at 760. As for Navarro-Rodriguez’s futility argument, he has not cited any facts to show that exhaustion would be futile, nor has he developed any futility argument beyond stating that “[a]n attempt at exhaustion would have been futile.” (Doc. No. 14 at 14.) This conclusory and unsupported assertion is not sufficient to excuse exhaustion of administrative remedies. See, e.g., Brown v. Warden Canaan USP, 763 F. App’x 296, 297 (3d Cir. 2019) (unpublished) (affirming dismissal of petition where petitioner “failed to allege facts to support a finding that exhaustion would have been futile”).

III. CONCLUSION

For the foregoing reasons, the Court will dismiss Navarro-Rodriguez's petition for writ of habeas corpus without prejudice for failure to exhaust administrative remedies. An appropriate Order follows.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania